82-1233
No.

In the Supreme Court of the United States

October Term, 1982

HELEN O'BANNON et al., Petitioners

v.

EVANGELINE COLEMAN et al., Respondents

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

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QUESTION PRESENTED

May a district court look outside a federally approved state plan (Aid To Families With Dependent Children) for an eligibility standard not required by federal law, and not otherwise included in a plan which has been accepted and approved by the relevant federal agency?

TABLE OF PARTIES

The caption of this case in the Court of Appeals for the Third Circuit is as follows:

COLEMAN, EVANGELINE, On behalf of herself and all others similarly situated,

Appellees

v.

O'BANNON, HELEN, Secretary of Pennsylvania Department of Public Welfare,

STOVALL, DON JOSE, Executive Director of the Philadelphia County Board of Assistance,

Appellants

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES:

STATUTES AND RULES:

TREATISE AND CONGRESSIONAL REPORTS:

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

Helen B. O'Bannon, Secretary of the Department of Public Welfare of the Commonwealth of Pennsylvania, hereby petitions that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Third Circuit entered September 30, 1982, rehearing denied October 27, 1982.

I. OPINIONS OF THE COURTS BELOW

The opinion of the Court of Appeals for the Third Circuit of which petitioners seek review is reproduced at 10a-11a. The opinion and order of the district court is reproduced at 1a through 9a.

II. JURISDICTION

The judgment of the Court of Appeals was entered September 30, 1982, rehearing was denied October 27, 1982. The jurisdiction of this Court is invoked pursuant to 28 U.S.C. §1254.

III. STATUTES INVOLVED

Title IV-A of the Social Security Act, "Grants To States For Aid And Services To Needy Families With Children And For Child-Welfare Services," provides:

> The sums made available, under this section shall be used for making payments to States which have submitted and had approved by the Secretary, State plans for aid and services to needy families with children.

42 U.S.C. §601.

> The Act further requires that a state plan:
> provide that no family shall be eligible for aid under that plan for any month if, for that month, the total income of the family (other than payments under the plan), without application of paragraph (8), exceeds 150 percent of the State's standard of need for a family of the same composition.

P.L. 97-35, 95 Stat. 357, Sec. 2303 (August 13, 1981), 42 U.S.C. §602(a)(18).

IV. STATEMENT OF THE CASE

Title IV-A of the Social Security Act, the Aid To Families With Dependent Children program, (AFDC) is one of many cooperative federalism social welfare programs. States that wish to participate must submit state plans to the specific federal agency (now Health and Human Services) for approval. Since the inception of the program Pennsylvania has participated and has had an approved state plan. One requirement for an AFDC state plan is that it set forth, in dollar amounts, what the state has determined as its "standard of need." At all times relevant, Pennsylvania's approved state plan documents specified that the "standard of need" was a series of dollar amounts (varying for family size and geographical areas) that also served as the payment level (the amount of assistance paid recipients with no other income) (Reproduced at 14a through 17a). State regulations governing administration of the plan provided the same (Reproduced at 18a through 20a). The federal government has regularly reviewed Pennsylvania's state plan and independently concluded that Pennsylvania's state plan provides that its payment level equals its standard of need (Reproduced 21a through 23a). Thus, as between the two parties to the state plan, there has always been unanimity that the state plan pegged the "standard of need" at the same amount as the payment level.

Congress, in 1981, enacted the Omnibus Budget Reconciliation Act of 1981, P.L. No. 97-35, 95 Stat. 357. Included within that Act, at Section 2303 (codified at 42

U.S.C. §602(a)(18)) was a gross income eligibility test which required all states to deny AFDC benefits to households whose monthly income exceeded 150% of the states established "standard of need." The Act nowhere defined "standard of need" nor in any way indicated that the "standard of need" referred to in Section 2303 was different than the "standard of need" already established by each state. Pennsylvania implemented Section 2303 by creating a gross income test of 150% of its payment level/"standard of need."

Respondents, plaintiffs below, sued alleging that Pennsylvania was in conflict with Section 2303 because its "standard of need" was not its payment level, but rather was something known as the Woodbury Standard. The Woodbury Standard was developed in 1955 by the predecessor agency to Pennsylvania's Department of Public Welfare. It was essentially a market basket type of analysis of what was necessary to meet/maintain a minimum standard of health and human decency. The Woodbury Standard has been regularly updated by the Department of Public Welfare by repricing its components to reflect inflation.

At the hearing, plaintiffs stipulated that the Woodbury Standard was never included in Pennsylvania's approved state plan and was never reported to the federal government for any purpose. Specifically, they conceded that it was not reported to the federal government as Pennsylvania's "standard of need." The evidence presented was consistent with the stipulation.

The district court entered a declaratory judgment that the Woodbury Standard was Pennsylvania's "standard of need" for purposes of Section 2303, and enjoined de-

fendants from using any other standard to determine eligibility under that section. The Court further found the Woodbury Standard was referred to in a Department of Public Welfare Budget Request, Governors' [illegible]ive Budgets, and a 1977 Department of Public Welfare publication. None of these documents were part of the federally approved state plan for AFDC, nor were they submitted to federal authorities.

The Third Circuit affirmed without opinion and denied reargument.

It is from the affirmance of the Third Circuit and of necessity the district court's opinion that defendants, petitioners herein, seek certiorari.

V. REASONS FOR GRANTING THE WRIT

This Case Raises Important Issues as to What a Court Can Consider When Determining What Is Included in an Approved State Plan for a Federally Funded Grant Program

As with all federal-state cooperative federalism programs, an AFDC state plan "is the central, organizing element of the Title IV-A program. A state's plan establishes both its funding relationship with the federal government and the substantive terms of all Title IV-A programs in which it has elected to participate." *Quern v. Mandley*, 436 U.S. 725, 741, 98 S.Ct. 2068, 2078 (1978). The plan is in the nature of a contract between the state and federal governments, and can only include what is clearly understood by the governmental parties. *Pennhurst State School and Hospital v. Halderman*, 451 U.S. 1, 101 S.Ct. 1531, 1539 (1981); *Edelman v. Jordan*, 415 U.S. 651, 94 S.Ct. 1347 (1974).

This Court, in the context of the Developmentally Disabled Assistance and Bill of Rights Act, and the Medical Assistance Act, has clearly stated that a state plan is in the nature of a contract. *Pennhurst State School and Hospital v. Halderman, supra; Harris v. McRae*, 448 U.S. 297, 100 S.Ct. 2671 (1980). There is no difference in the basic nature of the programs between those established by the Developmentally Disabled Assistance and Bill of Rights Act, Medical Assistance, and AFDC. All are voluntary programs based upon state and federal cooperation. *King v. Smith*, 392 U.S. 309, 88 S.Ct. 2128 (1968).

The section of Title IV-A at issue in this case, 42 U.S.C. §602(a)(18) is a subsection of Section 602(a) which lists what a state plan must provide. Therefore, the term "standard of need" used in Section 602(a)(18) must mean the "standard of need" already found in the state plan. The legislative history confirms this conclusion. The Senate Finance Committee Report stated:

> The committee believes that there should be a cutoff point, and that it is reasonable to establish that point on the basis of the amount each State determines to be its standard of need. The standard of need is used to determine whether a family is eligible for any assistance, and a family which has an income more than 50% above that standard should not be considered to be in need.

S. Rep. 97-139, 97th Cong. 1st Sess. at 504, 1981 U.S. Code Cong. and Ad. News at 771.

Title IV-A does not impose a statutory definition of "standard of need" for inclusion in the state plan. However, an AFDC state plan must "specify a statewide standard, expressed in money amounts, to be used in determining (a) the need of applicants and recipients and (b) the amount of the assistance payment." 45 C.F.R. Sec. 233.20(a)(2)(i). The amount of the standard, with the exception of a one time adjustment required by Section 602(a)(23) not relevant here, is a matter within the discretion of the state. *Quern v. Mandley, supra,* at 436 U.S. 740, 98 S.Ct. at 2077; *Jefferson v. Hackney,* 406 U.S. 535, 92 S.Ct. 1724 (1972); *Rosado v. Wyman,* 397 U.S. 397, 90 S.Ct. 1207 (1970); *Dandridge v. Williams,* 397 U.S. 471, 90 S.Ct. 1153 (1970). But, even though the amount is in the state's discretion, the only place that

the state standard can be found is in the approved AFDC state plan. Indeed, where a state rule for the operation of a cooperative federalism program has not been federally approved as part of the state plan, the rule is invalid. *Forbes Health Systems v. Harris,* 661 F.2d 282 (3d Cir. 1981). And, as *Pennhurst State School and Hospital v. Halderman, supra,* holds, the plan can only include what is clearly understood by the federal and state parties.

In *Pennhurst,* the issue was whether the federal statutory conditions offered to the state were sufficiently clear that the state could be deemed to have agreed to them. Here, the issue is the dimensions of the federal-state agreement where the statute gives the states some discretion as to the amount of one required element of the plan. Despite differences as to the specific issues, the principle remains the same—what was the clear understanding of the parties. The Courts should allow the governmental parties to rely on the approved plan for their understandings.

In light of these precedents, the courts were required to interpret the state plan as they would a contract, and contract law limits review to the four corners of the documents, the court's duty being simply to give effect to the intent of the parties as expressed in the contract. *Pennzoil v. Fed. Energy Reg. Comm.,* 645 F.2d 360 (5th Cir. 1981); *cert. denied,* U.S. , 102 S.Ct. 1000; *Harrison Western Corp. v. Gulf Oil Co.,* 662 F.2d 690 (10th Cir. 1981); *Mellon Bank N.A. v. Aetna Business Credit, Inc.,* 619 F.2d 1001 (3rd Cir. 1980); *Washington Metro Trans. Auth. v. Mergentine,* 626 F.2d 959 (D.C. Cir. 1980). Restatement (Second) of Contracts §§201, 209, 210. Interpretation of an integrated contract is a question of law. Restatement (Second) of Contracts §212.

To the extent there existed an ambiguity within the body of the state plan, the intent of the parties expressed by their actions or words control. *Contractor Utility Sales Co., Inc. v. Certain-Teed Products Corp.*, 638 F.2d 1061 (7th Cir. 1981); *Pennzoil, supra; United States, etc. v. Haas & Haynie Corp.*, 577 F.2d 568 (9th Cir. 1978). Restatement (Second) of Contracts §§201, 202. Again, the parties to the contract should be allowed to rely on what they both agree are its terms.

This Court has held that states, when drafting their state plans, may set their "standard of need" at the same rate as their payment level. *Rosado v. Wyman, supra.* Pennsylvania's AFDC state plan unambiguously states that it has exercised this option. Petitioner's witnesses stated it was Pennsylvania's intent to exercise this option and the federal agency witness stated that the federal agency understood it was Pennsylvania's intent to exercise this option and concurred in its doing so. Despite the clear intent of the parties, the courts below went beyond the state plan and relied on collateral materials to define the Pennsylvania "standard of need" as something other than its payment level.

By their actions, the lower courts have disrupted the very basis and the system of control which Congress has chosen to create and operate when dealing with grant programs based upon cooperative federalism. The Third Circuit, in the past, has affirmed the validity of this system by specifically invalidating Pennsylvania regulations when it found they constituted amendments to a state plan where the federal agency had not approved the change. *Forbes Health Systems v. Harris, supra.* The courts below have removed the binding nature of the state plan that each of these programs requires. That decision is,

therefore, in conflict with opinions of this Court. *Pennhurst, supra; Harris v. McRae, supra; Edelman v. Jordan, supra.*

Moreover, unless these state plans are binding, neither the federal nor state governments can determine exactly what it is they are agreeing to nor can they reasonably anticipate the programmatic or fiscal responsibilities each is committing itself to. Without finality, neither taxpayers nor beneficiaries under the program can determine how their government will operate. Administrators will be chilled from making responsible decisions because they will never know when those actions will be taken out of the context in which they are made and used to somehow redefine a state plan.

To correct these errors by the lower courts, and to insure the necessary stability for all federal grant programs which are defined by state plans, this Court should issue a Writ of Certiorari to review this case.

VI. CONCLUSION

This Court should issue a Writ of Certiorari to the United States Court of Appeals for the Third Circuit to review its judgment entered July 20, 1982.

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